

ST 02-0162-GIL 07/19/2002 CONSTRUCTION CONTRACTORS

Persons who permanently affix tangible personal property to real estate act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

July 19, 2002

Dear Xxxxx:

This letter is in response to your letter dated May 15, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I am seeking clarification of how to handle Illinois sales taxes for my new part-time, after hours business. I am starting a business in which I will be providing electronic system parts and installation/wiring labor at residential and commercial properties. I expect that approximately 50% of the time I will be installing the equipment into the property (inside walls), and 50% of the time will be non-intrusive such as running wiring along baseboards or just connecting television, stereo, and telephone systems.

What category of business would I represent? (Construction, retail or service)

How should I handle sales tax?

Would it be handled differently depending on what type of service I am providing to the customer?

How would this affect how I purchase equipment?

I am trying to complete the NUC-I form and would like clarification so that I am handling the sales taxes correctly. I appreciate your response as soon as possible.

Thank you.

Please be advised persons who take tangible personal property and permanently affix it to real estate act as construction contractors. See the enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075. Examples of construction contractors are persons who sell and install electrical systems, or parts thereof. See Section 130.1940(c).

Construction contractors incur Use Tax and local Retailers' Occupation Tax reimbursement liabilities, payable to their suppliers, based upon their cost price of items which they purchase for subsequent incorporation into real estate. If contractors' suppliers are not registered to collect Illinois tax, contractors must self assess the tax and pay it directly to the Department. Where contractors perform repair work on permanently affixed items, the Department considers these to be construction contract situations and contractors incur Use Tax and local Retailers' Occupation Tax reimbursement liabilities on cost prices of supplies and repair parts permanently affixed to realty.

Construction Contractors do not incur Retailers' Occupation Tax liability when they permanently affix tangible personal property to real estate. However, construction contractors who sell items "over-the-counter" or sell items that remain tangible personal property when installed, are acting as retailers and incur Retailers' Occupation Tax liabilities. Certain items that you reference in your letter could remain tangible personal property after installation. Please see 86 Ill. Adm. Code 130.1940(b).

Please be informed that Section 1 of the Retailers' Occupation Tax Act (35 ILCS 120/1) provides that construction contracts for the improvement of real estate consisting of engineering, installation, and maintenance of voice, data, video, security, and all telecommunications systems, do not constitute engaging in a business of selling tangible personal property at retail within the meaning of the Act if they are sold at one specified contract price. Rather, such contractors incur tax liability on their cost price of such systems. Please refer to 86 Ill. Adm. Code 130.1940(c)(3).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

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